

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant: David Dali (Amherst Barbeque and Mr. Chicken LLC)
36 Main Street, Amherst, MA 01002

Owner: EV Realty Trust
P. O. Box 678, Amherst, MA 01002

Date Application filed with the Town Clerk: May 30, 2007

Nature of request: Petitioner seeks a Special Permit to operate a Class II restaurant with seasonal outdoor dining under Sections 3.352.1 and 5.041 of the Zoning Bylaw.

Location of property: 96 & 98 North Pleasant Street, Map 14A, Parcel 43, B-G zone.

Legal notice: Published in the Daily Hampshire Gazette on June 7 and June 14, 2007,
and sent to abutters on June 5, 2007.

Board members: Tom Simpson, Hilda Greenbaum and Al Woodhull

Submissions:

The applicant submitted the following documents:

- A floor plan, entitled “Amherst Barbeque and Grill”, prepared by Kuhn Riddle Architects, dated May 30, 2007, showing the proposed interior layout and the tables for seasonal outdoor dining;
- A site plan from the Amherst GIS Viewer, dated May 29, 2007, showing the existing building, the surrounding roadways and parking lots and other buildings in the vicinity;
- A Management Plan;
- A Sample Menu.

Planning Department staff submitted the following documents:

- A memorandum dated June 14, 2007, commenting on the application;
- Copies of two previous Special Permits granted for the restaurant space, ZBA FY00-11 and ZBA FY2000-00042;

Site Visit: June 20, 2007

At the site visit the Board was met by the applicant, David Dali, and the owner of the building, Barry Roberts of EV Realty Trust. The Board observed the following:

- The location of the property on a busy downtown street, surrounded by retail uses and two churches;
- The location of metered parking spaces in front of the building and the large parking lot, privately and publicly owned, behind the building;
- The interior of both spaces that are to be combined to create the new restaurant, including the spaces formerly occupied by the restaurant, SOUPerBOWL, and the dress shop, Little Black Dress;
- The location of the kitchen and the take-out counter, proposed for the former SOUPerBOWL space, and the location of the dining room, proposed for the former Little Black Dress space;

- The location of the proposed bathrooms;
- The location of the proposed serving counter, walk-in refrigerator and cooking hoods;
- The asphalt sidewalk in front of the storefronts, where seasonal outdoor dining is proposed;
- The exterior of the building, including the sign band over the door and the location of the proposed roof vent, behind the parapet and approximately 14 feet from the windows;
- The location of the rear entry door where deliveries to the restaurant will occur.

Public Hearing: June 21, 2007

At the public hearing David Dali presented the petition and made the following comments:

- He plans to open a new restaurant next to CVS, located in the former SOUPeRBOWL and Little Black Dress spaces; the former SOUPeRBOWL space will be used for a new kitchen and take-out area; the former dress shop space will be used for the sitting area;
- There will be no smoking of food on the premises; the restaurant will use traditional cooking equipment and methods;
- The restaurant will be open seven (7) days a week from 11 a.m. to 1 a.m.;
- Mr. Dali would like to obtain a license to serve beer and wine when a license becomes available;
- There will be no live entertainment offered in the restaurant;
- There will be deliveries from the restaurant; one or two drivers will take food to people's homes;
- There is "lots of parking" available in the vicinity of the restaurant for delivery drivers to park;
- There will be four (4) full-time employees on the site at all times;
- There is a large dumpster behind the building that is shared with the other tenants;
- The restaurant will recycle paper and plastic products;
- There will be twelve (12) seats and two (2) tables available for outdoor dining;
- The ventilation system will not pose a problem; many other restaurants use the same system; it is very quiet and cannot be heard from the sidewalk; odors will not be evident either.

Mr. Simpson asked about the proposal to locate an exhaust fan on the roof of a single-story building, approximately twelve feet off the ground. He asked if the exhausted air will be deflected up. He also asked about signs.

Mr. Dali stated that:

- The restaurant will have only one fan and, as an example, the Black Sheep has four fans;
- The exhaust from the fan will be deflected up;
- The hours for delivery from the restaurant to peoples' homes will be:
 - 11 a.m. to 2:30 p.m. for lunch
 - 5:00 p.m. to 1:00 a.m. for dinner
- There will be one or two delivery vehicles.

Mr. Dali presented the following information regarding the signs:

- He presented a picture of the proposed signs;
- The signs will be 11 feet x 22 inches in size;
- The materials will be aluminum board and vinyl printing;
- The signs will fit between the trim boards on the new parapet that has been installed on the building;
- Each store in the building will have the same size and configuration of sign;

- There will be channel lights fixed onto the front of the building to light the signs, indirectly.

Mr. Simpson asked about training for staff for service of beer and wine. He noted that there is a Massachusetts Restaurant Association training program for serving alcohol. Mr. Dali stated that the employees will make sure that ID's are checked and that he is "Serve Safe" certified with regard to food service. He expressed interest in the training related to the safe service of alcohol. The restaurant will serve food and beer and wine the entire time that the restaurant is open. Mr. Dali noted that the restaurant is geared towards serving food and not towards drinking. Seating will be at booths which cannot be moved. There will be no bar area. Also, there will be no accommodation for large groups.

Ms. Greenbaum asked about the signs. She noted that the signs should be reviewed by the Design Review Board before being presented to the Zoning Board of Appeals. She asked about the roof vent and noted that most restaurants do not have vents on one-story roofs that are viewed from, and located close to, adjacent upper story windows. She expressed concern about odors emanating from the roof vent and concern about what the vent would look like. She asked if the vent could be screened from the view of people looking out of the second floor windows. Ms. Greenbaum noted that she would like to hear the recommendations of the Design Review Board with respect to the aesthetics of the vent. She also suggested that there should be fencing or planters placed around the tables in front of the building for outdoor dining.

Mr. Dali noted that the Town has plans to rebuild the sidewalk in the vicinity of the restaurant. Mr. Simpson stated that the landlord, Mr. Roberts, will be rebuilding and raising the private portion of the sidewalk in front of his building to create a level area, when the Town does its reconstruction.

Mr. Dali stated that he would be happy to place plants in pots outside, next to the outdoor dining area and that he believes that the sidewalk is level enough at this point to accommodate two tables. He also stated that the vent will be partially obscured by the roof parapet, but it will be slightly visible from the street and sidewalk.

Ms. Greenbaum suggested that Mr. Dali should come back to the Board at a future date with information about handicapped access to the front door and plans for parking for deliveries, both for supplies to the restaurant and for food to be delivered to peoples' homes. Mr. Woodhull suggested that Mr. Dali discuss with the landlord the possibility of reserving some spaces for the delivery drivers in the private parking area immediately behind the restaurant.

Mr. Dali stated that:

- There will be no double parking by delivery drivers in front of the restaurant;
- Deliveries of supplies to the restaurant will be made via the back door;
- Mr. Dali owns the Crazy Noodle restaurant on Main Street and there have been no complaints about trash, odors or people congregating in the area of that restaurant;
- He plans to open the new restaurant in September;
- The space formerly occupied by SOUPeR BOWL has always been a restaurant;
- SOUPeR BOWL, in its new location at the other end of the building, has a vent up on the roof.

Ms. Weeks stated that vents are not legally supposed to go through a wood frame wall and therefore it is difficult to locate a vent in an existing building. It is better and safer to vent the restaurant through the roof.

Mr. Woodhull expressed concern about the tenants on the second floor who have windows looking out onto the roof. Mr. Dali noted that state law requires that a vent be placed a minimum of 10 feet away from a window.

Mr. Simpson noted that the Management Plan says that deliveries from purveyors will be on Tuesday through Friday mornings, between the hours of 9:00 a.m. and 12:00 noon. He asked where the delivery trucks will park. Mr. Dali stated that delivery truck could park on the CVS property, near the dumpster. He stated that the trucks will not be large, trailer trucks, but smaller delivery vehicles. Mr. Woodhull suggested that Mr. Dali should speak with the landlord about providing space for deliveries, both to and from this business, including delivery trucks and delivery cars.

Mr. Dali stated that cooking oil will be stored in plastic containers and will be picked up by "Grease Car" once a month. The waste oil will be stored in the kitchen in four (4) containers. The fryers have a filtration system, so the oil only needs to be changed every two (2) days. Mr. Dali went on to say that there will be a steam buffet table where rice, beans, sweet and mashed potatoes and assorted vegetables will be served. People will help themselves to these side dishes. Barbequed chicken will be served. Fried chicken will primarily be offered as an appetizer and as a delivery item.

Bonnie Weeks, Building Commissioner, asked how the seasonal outdoor dining would affect the sidewalk and people's ability to walk to and fro. She noted that there is a minimum requirement for 48 inches to be clear for public passage. Mr. Simpson explained that the outdoor dining is proposed for the private area in front of the building and that there is ample room on the public sidewalk to accommodate public passage. Mr. Simpson asked if the applicant could install a buffer to separate the sidewalk from the dining area.

Mr. Dali stated that:

- The tables and chairs would be approximately 12 feet away from the public sidewalk;
- He did not wish to block access for take-out customers coming and going from the take-out door, but he is willing to install planters to separate the outdoor dining from the sidewalk;
- Take-out meals will be offered in standard take-out containers; paper plates will be used inside;
- He would like to put in a dishwasher eventually, but does not wish to do so at this time; therefore he prefers not to use china plates; he will use paper plates; however, he does plan to use metal cutlery;
- He will have trash cans available both inside and outside the restaurant.

No members of the public spoke with regard to this application.

Ms. Greenbaum stated that she would like to receive the Design Review Board's recommendations regarding the following:

- Venting
- Outdoor dining
- Signage
- Lighting.

Mr. Woodhull noted that he was concerned that the lights might be installed below the signs and may effect the night sky. Mr. Simpson recommended that the Board continue the public hearing so that the applicant can come back with more information. He recommended that the applicant speak with the landlord about the lighting of the signs and noted that there is a trend among the permitting authorities in town not to allow lights that shine upward into the sky.

Ms. Greenbaum asked about lighting for outdoor dining after dark. Mr. Dali stated that the entry to the building is now lit with “can” lights underneath the entry overhang, in the soffits, and that the outdoor dining area will be lit by these lights.

Mr. Woodhull asked about larger parties and how they will be accommodated. Mr. Dali stated that larger parties will need to split up, since the booths inside cannot accommodate large groups and the tables outside can only accommodate six (6) people each.

Mr. Simpson stated that the applicant will need to present information on tableware and trash management for the outdoor seating and take-out. There was discussion of how trash will be accommodated on site.

Mr. Simpson MOVED to continue the evidentiary portion of the public hearing to Thursday, July 5, 2007, at 8:00 p.m. Ms. Greenbaum SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing: July 5, 2007

Mr. Simpson stated that his company has worked for the landlord, EV Realty Trust, in the past. He further stated that he has no financial interest in the current case.

The applicant, David Dali, and the property owner, Barry Roberts, presented more information about the petition, as follows:

- There will be two (2) designated parking spaces in the private lot behind the building for delivery drivers to park their cars;
- Delivery trucks will pull into the “CVS” parking lot; this is where D.P Dough, SOUPeRBOWL and other tenants of the building receive their deliveries;
- Mr. Dali presented a photograph of the front of the building with a vent drawn on the roof, to indicate what the vent would look like from the street and sidewalk;
- Mr. Dali noted that the property owner, Barry Roberts, had built the façade with a parapet that would cover most of the fan; the fan will be about 36 inches tall and about 22 inches in diameter;
- Mr. Dali showed more photographs of fans on other buildings in the downtown area;
- He noted that most commercial buildings have fans.

Ms. Greenbaum expressed her concern about the visibility of the fan from the street and also that the tenants on the second floor of Mr. Roberts’ building may be bothered by the odors and aesthetics of the fan. Mr. Roberts stated that he thought that this was a concern that should be worked out between the tenants and the landlord.

Christine Brestrup of the Planning Department noted that the Design Review Board will be meeting on July 24, and although they will not discuss the issue of odors they could look at the aesthetics of the fan.

Mr. Dali reminded the Board that the restaurant that had previously occupied this space had a fan that blew out onto the alley to the south of the building, into the pedestrian space. The new fan will blow up into the sky. He quoted from a letter from the company that makes the cooking hoods, stating that an engineer will design the hood and fan system and that the airflow will be exhausted forcefully, with an “up-blast”.

Mr. Dali noted that many restaurants have this type of fan and that it is an improvement over the fan of the previous tenant. Mr. Roberts added that the same type of fan was installed at the other end of the building for the new SOUPeRBOWL location, over three months ago, and that the fan is currently operating.

Mr. Woodhull stated that he is concerned about the aesthetics of the fan. He noted that the downtown area smells like food because of the numerous restaurants. The proposed fan is probably designed correctly. However, he still has concerns about the second floor tenants who have windows and air conditioning that will be close to the fan. He acknowledged that the issue of the fan vis-à-vis the upstairs tenants was really Mr. Roberts' responsibility. Mr. Roberts noted that the building code requires that the fan be installed a certain distance from the windows. Ms. Greenbaum stated that she didn't want the fan to be installed on the front of the building.

Mr. Simpson stated that the way the downtown is organized there really is no front or back to the buildings, that all sides could be considered "the front" because pedestrians had access to all sides.

Mr. Dali and Mr. Roberts' presented information on the lighting of the signs. Mr. Roberts stated that the signs will be lit by a linear fluorescent light that will shine down. The color of the light fixtures will match the façade of the building. There will be one light fixture over each sign band. Mr. Roberts further noted that the lighting of the signs had been reviewed and approved by the Design Review Board at the time that the building renovations were presented to them.

Mr. Roberts' stated that the oversized "D.P. Dough" sign that had been up on the roof of the building had been removed. He stated that all of the stores in the building will have the same size sign – 11 ft. x 22 inches.

Ms. Greenbaum asked about other proposed signs such as signs indicating hours of operation, "Open" signs and menus and she expressed her concern about sign clutter in the downtown area. Mr. Dali stated that he is not proposing any other permanent signs.

Mr. Simpson calculated the square footage of the proposed signs in relation to the square footage of the facades of the two storefronts and determined that the sign area was within the 10% allowed in the Zoning Bylaw. He asked Mr. Dali to come back to the Board for final approval on the signs after the Design Review Board had approved them.

Mr. Woodhull asked about the sloping pavement in front of the proposed restaurant and whether it would be suitable for outdoor dining. The Board discussed the issues related to outdoor dining, including the type of tables being proposed, the number of seats that would be allowed, the fact that the entire area would be redesigned and rebuilt within the next few years and the need for recommendations from the Design Review Board.

Mr. Dali stated that he does not plan to offer outdoor dining until next spring. Mr. Simpson stated that the Zoning Board can allow the concept of outdoor dining, with a limit on the number of seats, but require that the details be brought back to the Board for its approval. These details would include the types of tables and chairs and planters to be used, a site plan showing the placement of these items of outdoor furniture, and trash receptacles. Mr. Roberts stated that he had ordered three (3) of the trash barrels now used by the Town along the sidewalks. He plans to install them along the front of his building.

The Board noted that the outdoor furniture will need to be stored indoors during the winter.

The Board discussed different numbers of seats that could be accommodated in the outdoor dining area. Mr. Dali stated that there is probably room for four (4) smaller tables.

Mr. Dali stated that there would be a full-time manager for the restaurant during hours of operation. He also stated that he has not taken the Serve-Safe alcohol course but that he is aware of the requirements.

The Board discussed the number of people who would be allowed in the restaurant

Mr. Simpson MOVED to close the evidentiary portion of the public hearing. Ms. Greenbaum SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Discussion

During the public meeting the Board discussed possible conditions that would be imposed if the Special Permit were approved.

Public Meeting – Findings:

Under Section 10.38 of the Zoning Bylaw, Specific Findings, the Board found that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed, and is compatible with surrounding uses, because the site is located on a heavily-traveled street in the downtown area and is surrounded by other retail and commercial uses including other restaurants.

10.382 and 10.385 – The proposal would not constitute a nuisance and protects the adjoining premises against detrimental or offensive uses because the exhaust vent will be located on the roof, a minimum of ten (10) feet away from the upstairs windows and the exhaust will be directed upward by an “up-blast” mechanism, and there are conditions placed upon the permit to control noise and lights, and the Design Review Board will review the aesthetics of the roof-top vent and advise the Zoning Board with regard to placement of the vent.

10.383 and 10.387 – The proposal will not be an inconvenience or hazard to abutters, vehicles or pedestrians and it provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, because all deliveries to the site will be made from the parking lot at the rear of the property and two parking spaces have been reserved in the private lot for delivery drivers. In addition, the seasonal outdoor dining will be located so as not to obstruct either the public walkway or the entries to the restaurant.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the floor plan shows adequate space for kitchen, bathroom, serving and seating areas as well as entries and exits, and reserved parking spaces will be provided for delivery drivers on site.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the Bylaw because the property is located in the Municipal Parking Zone and therefore no on-site parking is required, and the proposed signs are in conformance with the Bylaw in terms of size, and the design of the signs will be reviewed by the Design Review Board and then submitted to the Zoning Board of Appeals for approval.

10.388 – The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment because all deliveries will be made from trucks parked in the parking lot located to the rear of the building, in a manner similar to the deliveries made to other existing businesses within the building.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes because the building is connected to the town sewer, waste oil will be collected and stored in the building and collected twice a month, other refuse will be placed in the dumpster in the rear parking lot and collected daily, and recyclables will be brought to the recycling center twice a week by the proprietors.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because lights will be downcast and will be directed to shine on the signs and on the entryways and seasonal outdoor dining area only and will not shine onto adjacent properties or streets.

10.395 – The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity because the building has been newly renovated in accordance with a design reviewed and approved by the Design Review Board, and the proposed changes to the outdoor dining area will also be reviewed by various town boards and committees prior to construction.

10.396 – The proposal provides partial screening for rooftop equipment because the parapet wall on the front of the building should screen a portion of the rooftop exhaust vent from the view of passersby on the street and sidewalk and the Board has been assured that the vent will not intrude on the streetscape..

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw because it will provide a convenient, moderately-priced restaurant within walking distance of the residents in the center of town and the students at the nearby college and university, and the proposal promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting – Zoning Board Decision

Ms. Greenbaum MOVED to grant the application with the conditions as drafted. Mr. Woodhull SECONDED the motion.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit with conditions, under Sections 3.352.1 and 5.041 of the Zoning Bylaw, to operate a Class II restaurant with seasonal outdoor dining, as applied for by David Dali, at 96 & 98 North Pleasant Street, (Map 14A, Parcel 43, B-G Zone).

THOMAS SIMPSON

HILDA GREENBAUM

AL WOODHULL

FILED THIS _____ day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2007.

NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2007,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to operate a Class II restaurant with seasonal outdoor dining under Sections 3.352.1 and 5.041 of the Zoning Bylaw, as requested by David Dali (Amherst Barbeque and Mr. Chicken LLC), at 96 & 98 North Pleasant Street, (Map 14A, Parcel 43, B-G Zone) with the following conditions:

1. A final revised floor plan shall be submitted to the Board for review and approval at a public meeting. The restaurant shall be built according to the plan approved by the Board at that meeting.
2. A final revised management plan shall be submitted to the Board for review and approval at a public meeting. The restaurant shall be managed according to the plan approved by the Board at that meeting.
3. The hours of operation shall be: Monday through Sunday 11 a.m. to 1 a.m.
4. The occupancy level shall not exceed seventy (70) seated patrons and six (6) employees at one time.
5. Seasonal outdoor dining shall not exceed sixteen (16) seats. The tables and chairs used for seasonal outdoor dining shall be removed and stored from November 1 to April 1. Flowers and other decorative plantings shall be installed in the planters proposed for the outdoor dining area. These plantings shall be continuously cared for and maintained in season. If not in use for decorative purposes during the winter months, the planters shall be removed and stored appropriately.
6. There shall be an outdoor trash receptacle installed in conjunction with the seasonal outdoor dining area and the take-out area.
7. The applicant is responsible for maintaining the area in front of the restaurant and between restaurant and the public sidewalk free from litter and debris.
8. All deliveries to the site shall take place at the rear of the building.
9. There shall be no live entertainment and the level of pre-recorded music emanating from the building shall not exceed the ambient noise level at the property line.
10. All employees shall have Serve-Safe or similar alcohol training.
11. A full menu shall be offered until closing.
12. Alcohol service shall cease at 12:45 a.m.
13. Signs shall be reviewed and approved at a public meeting after review by the Design Review Board.
14. A final revised site plan for the seasonal outdoor dining area shall be submitted for review and approval by the Board at a public meeting.

15. Catalog information regarding site furniture, including chairs, tables and planters to be used in the seasonal outdoor dining area, shall be submitted for review and approval by the Board at a public meeting after review by the Design Review Board.

16. If there are any significant changes to the floor plan or to the plan for outdoor dining, a new plan shall be submitted for review and approval by the Board at a public meeting, including information about proposed changes in placement or type of chairs, tables and planters.

17. This permit shall expire upon change of ownership of the restaurant.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE